Office-Supreme Court, U.S.
FILED
JAN 23 1981
ALEXANDER L. STEVAS,
CLERK

80-1279

No. .....

In The

Supreme Court of the United States

October Term, 1980

LEONARD A. HILL,

Petitioner,

vs.

AMERICAN AIRLINES, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

LEONARD HILL

4410-A McCombs East
San Antonio, Texas 78220

Pro Se

COCKLE PRINTING CO., 2311 Douglas St., Omaha 68102

QUESTION PRESENTED

Whether the lower federal courts erred as to the findings of fact concerning lack of discrimination in terms and conditions of appellant's employment, and as to finding of fact and conclusions of law as to whether appellant's discharge constituted an improper and illegal reprisal for appellant's participation in protected activities pursuant to § 704 (a) of Title VII. Whether the lower federal courts overlooked the evidence submitted in trial.

TABLE OF CONTENTS

Pages

Jurisdiction 1

Constitutional and Statutory Provisions Involved 2

Statement of the Case 3

Reasons for Granting the Writ 18

Conclusion 18

Exhibit A—Opinion of the United States Court of Appeals for the Fifth Circuit ..... App. 1

Exhibit B—Appellee letter of retaliation against appellant. ..... App. 2

Exhibit C—Name and address of attorney of record that submitted brief for appellant to the Fifth Circuit who later acknowledged his conflict in interest in the case ..... App. 3

Exhibit D—Names and addresses of attorneys that would not handle case for appellant. (Reason for Pro Se) ..... App. 4

CASES CITED

Caston v. Sears, Roebuck & Co., 556 F. 2d 1305, 1309 (5th Cir. 1977) 17

E. E. O. C. v. C&D Sportswear Corp., 398 F. Supp. 300 (M. D. Georgia 1975) 14

Ferrerro v. United States, 603 F. 2d 510 (5th Cir. 1979) 11

Gillan v. Federal Paper Board Co., 479 F. 2d 97 (2nd Cir. 1973) 16

CASES CITED—Continued

Pages

Hill v. American Airlines, Inc., 479 F. 2d 1057 (5th Cir. 1973) 5

McDonnell Douglas Corp. v. Green, 411 U. S. 792, 802-803 ..... 16, 18

McFadan v. Baltimore SS Trade Ass'n, 352 F. Supp. 403, 412 (D. Maryland 1973), aff'd. 16

Shochstadt v. Worcester Foundation for Experimental Biology, Inc., 11 FEP 1426 (D. Mass. 1976) 17

Tidwell v. American Oil Co., 332 F. Supp. 424 (D. Utah 1971) 16

STATUTES CITED

28 U. S. C. § 1254 (1) 1

42 U. S. C. 1981 ..... 2, 3, 13, 16

42 U. S. C. 2000e, et seq. 2, 3

TEXTS CITED

E. E. O. C. Dec. 7-115, 3 FEP 273 (1971) (Disparate Treatment for Lack of Work and Absenteeism) 15

E. E. O. C. Dec. 70-601, CCH E. E. O. C. Dec. 6124 (1970) (Discriminatory Job Assignment) 15

E. E. O. C. Dec. 71-185, 3 FEP 1025 (1971) (Disparate Penalty for Safety Violation) 15

TEXTS CITED—Continued

Pages

Schlei and Grossman, *Employment Discrimination Law* (Washington, D. C. 1976) 13

CONSTITUTION CITED

Article XIII, Constitution of the United States 2

No. .....

In The

Supreme Court of the United States

October Term, 1980

LEONARD A. HILL,

Petitioner,

vs.

AMERICAN AIRLINES, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JURISDICTION

Jurisdiction in this cause is premised upon 28 U. S. C. § 1254 (1) for review by certiorari of judgment and opinion of the United States Court of Appeals for the Fifth Circuit. A per curiam: affirmed opinion was issued by that Court on October 27, 1980 before Ainsworth, Garza

and Sam D. Johnson, Circuit Judges. The petitioner, Leonard A. Hill, did not file a petition for rehearing and suggestion for rehearing in banc.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant portions of Article XIII, Constitution of the United States.

Neither slavery nor *involuntary servitude,* except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

STATEMENT OF THE CASE

These suits SA-76-CA-112 and SA-76-CA-162 were brought in equity authorized and instituted pursuant to Sections 2000e-2 and 2000e-5 (f) of Title VII of the 1964 Civil Rights Act, 42 U. S. C. 2000e, et seq. Jurisdiction for the Court is invoked to secure the protection and redress the deprivation of rights secured by 42 U. S. C. 2000e, et seq., providing for relief against "race, color, religion, sex or national origin" discrimination in employment compensation, terms, conditions or privileges.

Jurisdiction of the Court was also invoked under 42 U. S. C. 1981 which provides that "all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens . . ." Jurisdiction was also invoked to remedy a violation of

anti-retaliation provisions of the 1964 Civil Rights Act, 42 U. S. C. 2000e-3 (a).

On June 1, 1974, appellant filed a separate suit against appellee, on the same grounds in SA-76-CA-162, alleging appellee discriminated against him in the terms and conditions of his employment by forcing him to cover eight hour shifts of duty alone and subjecting him to additional harrassment by refusing to allow him time off without pay. In both cases, appellant prayed for back pay, plus interest, reinstatement, and declaratory judgment that defendant's practices and policies were violated of Title VII and 42 U. S. C. § 1981, and cost and attorneys fees.

The late Honorable John H. Wood, Jr., by order dated August 12, 1976, consolidated SA-76-CA-112 and SA-76-CA-162, and ordered that they proceed under No. SA-76-CA-112 (R., p. 11).

On December 28, 1976, appellant's attorney, Paul D. Rich, filed his motion to withdraw (R., p. 17); said motion being denied until appellant was able to retain other counsel by order of the Court dated March 1, 1977 (R., p. 19).

On November 14, 1977, appellee filed motion to dismiss for failure on the part of appellant to comply with the order of the court requiring consolidation and amendment of its complaint by January 5, 1977 (R., p. 20).

On February 8, 1978, appellant, now proceeding *pro se* (which for all practical purposes he had done since the filing of his original complaints) requested additional time to obtain counsel (R., p. 27), to which the court replied by order denying the motion requesting additional time and giving plaintiff until March 14, 1978 to comply or show cause why the action should not be dismissed (R., p. 29).

On March 13, 1978 plaintiff filed his amended complaint *pro se,* repeating and consolidating the above allegations in his earlier two complaints. On March 29, 1978 the court denied appellee's motion to dismiss for plaintiff's failure to comply with the court's order and directed by separate order entered March 29 that appellee answer appellant's amended complaint (R., pp. 37-38).

On September 27, 1978 appellant, Leonard Hill, by *pro se* motion requested the court to allow his attorney of record, Mr. Paul D. Rich, to withdraw (R., p. 43) which the Court allowed as entered by its order of October 5, 1978 (R., p. 45).

Issues having been joined, the Court ordered that the consolidated cases be referred to the Honorable John P. Giles, United States Magistrate, for evidentiary hearing on April 16, 1979 (R., p. 60) and said evidentiary hearing was held on July 5, 1976 (R., p. 2).

On July 30, 1979 the Honorable Magistrate Giles entered his findings and recommendations, finding against appellant and in favor of appellee (R., p. 77). Appellant duly filed on August 10, 1979 objections to the findings and recommendations of the United States Magistrate (R., p. 84). The Honorable United States District Judge D. W. Suttle, sitting instead of the then deceased late Honorable John H. Wood, entered his order adopting the Magistrate's recommendations on December 25, 1979 (R., p. 89). Appellant duly filed his Notice of Appeal on December 26, 1979 (R., p. 93).

The following facts and issues not in genuine dispute are established by the pleadings, by the stipulations or admissions of counsel, or by the evidence admitted at trial (R., p. 50).

Leonard A. Hill, appellant, was employed by appellee as a Skycap on December 25, 1965 in the San Antonio facility. Mr. Hill remained in the employ of appellee until September 29, 1974 when he was discharged. As shown by plaintiff's Exhibit 4, appellant's primary duty as Skycap was to provide porterage and general information to passengers concerning flight information, and provide baggage check service (PX 4). During the course of appellant's employment with appellee, there was a reduction in force of Skycaps from five fulltime individuals to three, which "caused quite a bit of fatigue and excessive work, since [appellant and the other two Skycaps] were doing the work for three airlines." (R., p. 81).

The record was undisputed that all of the skycaps employed by American Airlines were black and that the history of employee relations between appellant and appellee had been acrimonious on the subject of appellant's perceived ethnic bias on the part of appellee. Over the course of his employment, Mr. Hill had filed a previous charge with the E. E. O. C. which resulted in findings of probable cause of discrimination (PX 11); Mr. Hill had initiated a previous lawsuit thereafter for perceived racial bias, which culminated in an appeal to this Court and this Court's decision in *Hill v. American Airlines, Inc.*, 479 F. 2d 1057 (5th Cir. 1973) which affirmed the District Court's finding of no discrimination in appellee's institutionalization of a curbside system of baggage checking, and a utilization of an Anglo employee as permanent baggage checker without porter duties. However, this Court did remand for further proceedings on appellant Hill's allegations that appellee had discriminated against him in vacation policy, testing and pay increases. These proceedings were

subsequently dismissed with prejudice by agreement of the parties. But the Record of proceedings from this lawsuit No. SA-71-CA-192 and styled Leonard Albert Hill was tendered into evidence as Exhibit Four (4) and was permitted by the Honorable U. S. Magistrate John P. Giles in trial that was held July 5, 1979. More on this case later in the Writ.

The lower court overlooked the following evidence that was entered into the evidentiary hearing on July 5, 1979. There was a failure of consideration in case SA-71-CA-192. Appellant's attorney in case SA-71-CA-192, Mr. Les Mendelsohn told appellee in letter (appellee's Exhibit 3, Volume II, that he feels this part the Court of Appeals reversed and remanded for further proceedings with respect to the charges of discriminatory vacation policies, testing, and pay increases could be settled for monetary relief of $2500.00 plus selection of vacation time by appellant, but Mr. Mendelsohn told plaintiff of $1500.00 settlement fee only. Case SA-71-CA-192 involved a Caucasian employee whereas case SA-76-CA-112 involves all Negroes. Appellee continued to require appellant to perform curbside responsibilities up to September 29, 1974 and refused to compensate appellant for these responsibilities. Appellee continues to use curbside responsibilities in determining appellant's evaluation reports up until appellant's discharge from appellee's employment (R., p. 63). Appellee required appellant to cover an eight hour shift alone and perform skycap duties for defendant and two other airlines per the work schedule made out by supervisor, Harry Ferbrache which did result in fatigue to excess and

tire with bodily labor. Defendant's Exhibit No. 3 contained records of the increased passenger boarding. Defendant's Exhibit No. 3 entitled "the plaintiff, Leonard Albert Hill's personnel file as maintained by American Airlines, Volume I, contains the written refusals on three different occasions of Mr. Harry Ferbrache's to let plaintiff off without pay, when there still would have been two skycaps still on duty. The letter from Mr. Barney Spurlock defendant's Exhibit No. 3 clearly outlines the retaliating procedures Mr. H. Ferbrache was to use against plaintiff. Mr. Barney O. Spurlock, Jr., was director of labor relations for defendant in New York. Mr. H. Ferbrache, plaintiff's supervisor, followed these procedures by giving plaintiff poor evaluation reports as contained in defendant Exhibit No. 3 with no raises or low raises, in pay. Mr. Ferbrache put six different letters dated from 10/20/71 to 8/24/74 entitled "record of discussions with Leonard Hill" in plaintiffs personnel file. Mr. Harry Ferbrache testified under oath in case SA-76-CA-192 that curbside checking of baggage was started around March 1966 but in case SA-76-CA-112 he testified under oath that this service was done by American Skycaps before plaintiff started to work for American Airlines. Plaintiff started to work for American Airlines December 25, 1965.

September 29, 1974 Incident

The record on the development of the incident of September 29 which led to Mr. Hill's termination was developed in detail by testimony of appellant and American Airlines' witnesses at the trial. Not surprisingly, the reports of American Airlines' employees differ in quality as

to the version of Mr. Hill. However, after the biases are discounted a factual summary emerges.

Three ticket agents of American Airlines along with Mr. Hill were immediate witnesses to the incident: Mr. Jose Cantu, Mr. Rudolf Lambaria and Mr. James Gavlick.

According to the testimony, both Messrs. Lambaria, Cantu and Gavlick were ticket agents at the time of the incident. The undisputed testimony is that a passenger by the name of Westrup, along with two lady traveling companions, entered the terminal approximately ten minutes prior to departure time for an American Airlines' flight to Chicago. Mr. Hill had been on duty since 6:30 that morning, three to four hours of this shift being worked alone before another Skycap came on duty (Tr., pp. 86-87). At the time of the incident, Mr. Hill was the only American Airlines' assistant on duty. Mr. Hill assisted Mr. Westrup and his two traveling companions into the terminal with four bags, after informing them that they should go directly to the counter because it was too late to check baggage (Tr., p. 87). According to Lambaria, the agent that assisted Mr. Westrup, Westrup was told that he could not check the bags at the counter and was advised that the baggage would not be able to go on the flight with him (Tr., pp. 24-25). According to Lambaria, after being so informed, Westrup told the Skycap, Mr. Hill, to take the baggage to the gate. Hill advised Westrup that he was not able to take the baggage. The testimony was undisputed that the gate was approximately 150 yards from the check-in counter, and that the baggage totalled four bags and a tote bag, which Hill personally testified to were very heavy (Tr., p. 88). At this point,

passenger Westrup made a derrogatory racial slur directed to Mr. Hill. Testimony conflicts on the substance since apparently more than one racial invective was directed to Hill, and each of the witnesses thus recalled a separate version. According to Cantu, the statement was "so that's the way you Nigger son-of-a-bitches are." (Tr., p. 7). According to Lambaria, the statement was "that's why you Niggers don't get anywhere in this world." (Tr., pp. 24-25). According to Hill, the statement was "this damn Nigger won't take the bags to the gate." (Tr., p. 88).

There is conflicting testimony as to what next ensued. Cantu testified that Hill was exiting the door while passenger Westrup continued to make statements, and after the last statement above quoted, Hill made a "one-eighty" towards passenger Westrup and thereafter struck him (Tr., p. 7).

Lambaria has a slight modification on Cantu's testimony. After the last derrogatory remark above made quoted by Lambaria, Hill was to return to the passenger to state that "his name was Leonard Hill." The passenger then made another derrogatory remark, and at that time Hill reputedly struck the passenger and he fell (Tr., pp. 24-25).

Hill's own testimony is that after the expletive above quoted which followed his advice to the passenger of his inability to take the baggage to the gate, Hill moved off, whereupon the passenger followed him hurling more *invective* to which the 51 year old Hill then responded to by striking the 35 year old verbal assailant in the mouth.

The record is undisputed that Hill was then set upon by the two female passengers, to which he responded de-

fensively by merely raising his arms to avoid the blows (Tr., p. 89). Subsequently, both Hill and the passenger Westrup apologized to each other. Hill was temporarily suspended pending an investigation by the Airlines, and on October 2 was terminated by communication dated October 2, 1974 (PX 3) on the grounds that he had denied a passenger assistance and offered no alternative to solve this problem which then developed an altercation which terminated in Hill's striking the passenger. Hill's reputed behavior in denying the passenger service "to which he was entitled" and "violent physical reaction" were "violations of company[1] rules and regulations." (PX 3).

The undisputed testimony was that there was no regulation which required the Skycap to leave his normal duty station to take baggage to the departure gate (PX 4). The job description for Skycaps in item one specifically stated the job description of the Skycap is to "escort passenger and baggage to check-in position."

Frank N. Bristow, Jr., manager of operations and the American Airlines' witness called upon to develop airline policy, and the author of Hill's termination letter, testified that for a Skycap to take baggage to the gate departure area was not a unique request which had been done in his observation almost regularly (Tr., p. 50). However, upon further examination he testified that he couldn't say it was or he couldn't say it wasn't mandatory for such service to be provided to a passenger and in fact the termination was because of the striking of Westrup (Tr., pp. 56,

---

1 Defendant never submitted copies of these rules or regulations.

59). To further augment the reason for firing Mr. Hill, Bristow further testified that the termination was not based or connected with the E. E. O. C. charge which Hill had filed on September 3 concerning the inadequacy of Skycaps. The following colloquy occurred between Bristol and his counsel:

> "Question: To your knowledge was that termination in any ways related to or based upon or connected with an E. E. O. C. charge which he had filed a month or so before?
>
> Answer: No, sir. To the best of my knowledge, I did not know of any such action at the time that this incident occurred and when it was investigated."

Though it is incredulous that by September 23 American Airlines' local office in San Antonio was not informed of a charge which by statute had to be provided through their New York offices by September 13, it is further incredulous that Bristow could testify Hill's firing was not identified, connected or otherwise related to the substance of his E. E. O. C. complaint which he knew nothing of. It was Bristow that wrote the letter of September 10, 1974 which informed Hill that notwithstanding his overworked condition, "the right to establish levels of manning lies entirely with the company," (PX 13) in his response to the formal grievance which was the basis for Hill's E. E. O. C. complaint of that same date.

Appellant is mindful of the substantial burden under the clearly erroneous rule, that the lower Court, after reviewing all the evidence, must be "left with the definite and firm conviction that a mistake has been committed." *Ferrerro v. United States,* 603 F. 2d 510 (5th Cir. 1979). Here

the totality of the evidence shows such a mistake. The undisputed evidence is that all Skycaps employed at the San Antonio facility were Black. That the reduction in force caused the remaining members of appellee's Black work force to sustain an increase in workload. That employee Hill made attempt after attempt to get management to be responsive to the inadequacy of assistance, only to be met with platitudes which the court mistakingly took as an expression of concern on the part of appellee for the welfare of its employees. If concern did exist, it certainly was not manifested when the 51 year old Mr. Hill was terminated from ten years of good service to his employee because he struck an antagonist sixteen years his junior, in a most stressful work environment.

In short, the lower court was wrong in holding that appellant had not made out a prima facie case of racial discrimination in the evidence showing the inadequacy of Black workers assigned to perform the function of Skycap at the San Antonio facility, caused by American's action of reducing the work force in half. It compounded that error when it ignored the fact that appellee had put no evidence articulating in legitimate non-discriminatory reasons for its action, and by taking inferences unwarranted from the evidence, which supported a callous indifference on the part of American Airlines, appellee, towards Black employees, and specifically to Leonard Hill.

The Court Erred As A Matter of Law and Fact in Holding That Appellant Failed to Present a Prima Facie Case of Retaliatory Discharge

Magistrate found, and the District Court affirmed as a matter of law, that appellant failed to make a prima

facie case of retaliatory discharge. In support of this legal conclusion, the Magistrate found:

> "The evidence adduced at trial so clearly proves that Hill was discharged for striking a passenger to the floor, that there is no room for an inferential causal connection between the E. E. O. C. complaint and Hill's termination."

In focusing only on the E. E. O. C. complaint as the subject for retaliation, the Magistrate clearly erred. Section 704 (a) of Title VII (42 U. S. C. § 1981) is the source of protection against retaliation for those who oppose discrimination *or* participate in the Title VII process. As stated by Schlei and Grossman in their treatise, *Employment Discrimination Law*[2], "it is essential to the analysis of § 704 (a) to recognize its two different clauses: discrimination by the specified respondent is forbidden against a specified type of person: (1) because he has opposed any practice made unlawful employment practice by this title; *or* (2) because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this title. . . ." *Supra*, p. 416. (Emphasis added.) In focusing only upon the conduct of appellant Hill in participating in protected activity of filing a charge of the E. E. O. C., and ignoring the substantial evidence in the record of Hill's continued participation in opposition to activities or actions by his employer which appellant urges this court constituted unlawful employment practices, the court erred as a matter

---

2 Barbara Lindeman Schlei and Paul Grossman, *Employment Discrimination Law* (Washington, D. C. 1976).

of law in its conclusion that no prima facie case was made of reprisal and retaliation.

In its conclusion of law that no reprisal formed the basis of Hill's termination was largely based on the testimony of F. N. Bristow, who testified singularly that he did not know of a prior E. E. O. C. charge made by appellant and terminated him because of his striking of a passenger.

In weighing this evidence so heavily, the Magistrate in the District Court overlooked the evidence that Hill had made his formal complaint to American Airlines directly to a Bristow subordinate, Furbrache, by way of a formal grievance (PX 13).

On September 10, 1974, Bristow himself responded to Hill's formal grievance of discrimination on the basis of inadequate Skycap assistance in his letter of that date, which has been previously referenced.

As the court found in *E. E. O. C. v. C&D Sportswear Corp.*, 398 F. Supp. 300 (M. D. Georgia 1975) where there is an underlying unlawful employment practice which the employee informs the employer of and is subsequently discharged therefor, the employee is within the scope of § 704 because he has opposed a practice made an unlawful employment practice and may not be fired therefore in retaliation. Thus, whether American Airlines' official Bristow was aware of the E. E. O. C. is of no merit.

The causal connection between the protected activity herein of filing a formal complaint of unlawful actions on the part of appellee by appellant, and his subsequent termination and reprisal therefore is established by the fact

appellant was treated differently from non-protesting employees in his termination for striking the passenger.

As stated by Schlei and Grossman, supra, at 438 to 439, the concept of "disparate treatment" in § 704 (a) cases is the same as in other Title VII situations, except that the race, religion, sex and national origin of the other employees is not important. Thus, i. e., if a Black who is engaged in opposition is treated different from similarly situated co-workers, black or white, who have not, this is evidence of a retaliatory motive. See for example, *E. E. O. C. Dec.* 71-185, 3 *FEP* 1025 (1971) (Disparate Penalty for Safety Violation); *E. E. O. C. Dec.* 7-115, 3 *FEP* 273 (1971) (Disparate Treatment for Lack of Work and Absenteeism); and *E. E. O. C. Dec.* 70-601, CCH *E. E. O. C. Dec.* 6124 (1970) (Discriminatory Job Assignment).

The evidence is undisputed that American Airlines had never fired an employee at the San Antonio local facility for engaging in physical reprisals to racial invective. The totality of the evidentiary support for appellee's non-retaliatory motivation in the firing of appellant Hill rests in the self serving statements of American's employees and officials that no regulations to their knowledge "permitted" such activities, and that American Airlines as a service company depended upon passenger goodwill, and such activities such as striking a passenger was "not . . . tolerated by anyone, including the managers; no one." (Tr., p. 81).

Balanced against this testimony, however, was American's self serving admissions that they did not support the conduct of the passenger; and no American Airlines' em-

ployee called to testify could recall having been made the subject of such racial invective, and neither did the company show any evidence that it has terminated employees for suitable reaction to such slurs.

Thus, one must wonder at what source came the evidence adduced at trial which "so clearly proved" Hill's discharge was due to his having struck a passenger to the floor rather than his participation in protected activity of protest against the employee's discriminatory conduct, or his filing of his E. E. O. C. complaint having figured as one of the reasons for his discharge.

As stated in *Tidwell v. American Oil Co.*, 332 F. Supp. 424 (D. Utah 1971), a case in which the court did find a § 704 (a) retaliation,

> "The issue is whether plaintiff has shown by a fair preponderance of the evidence that her refusal to engage in an unlawful employment practice was the principal reason for her discharge. [Citations Omitted]. It need not be the sole reason since such matters are almost always complicated and based on several reasons."

Thus, in evaluating the ultimate merits, the question may be treated as whether or not the adverse employment actions would have taken place had there been no participation or opposition on the part of the discharged party. See *Gillan v. Federal Paper Board Co.*, 479 F. 2d 97 (2nd Cir. 1973); *McFadan v. Baltimore SS Trade Ass'n*, 352 F. Supp. 403, 412 (D. Maryland 1973), aff'd. However, the above precedent should be mitigated by the Supreme Court's holding in *McDonnell Douglas Corp. v. Green*, 411 U. S. 792 (19—) where the Supreme Court emphasized that "Title VII tolerates no racial discrimination,

subtle or otherwise." Similarly, Title VII tolerates no discrimination for participation and protected activities. Thus, if it is shown the retaliatory discrimination on the part of the employer contributed among other reasons to cause the discharge, there is a violation of the statute. *Shochstadt v. Worcester Foundation for Experimental Biology, Inc.*, 11 FEP 1426 (D. Mass. 1976).

Thus, the courts below were totally mistaken in their factual finding that no evidence existed which showed either Hill's participation in protected activities of protest or actual filing of a Title VII complaint had not figured as a partial reason for the severe penalty represented by his discharge for his conduct on September 29. Totally ignored by the courts below was the failure of American Airlines to have established a pattern in the past in utilizing this ultimate reprimand. The fact that appellant conducted the trial of this case *pro se* without the knowledge of intricate discovery procedures available to him, in the face of appellee's failure to produce evidence which warranted its discharge of appellant as part of its overall policy, should resolve the ambiguity in the factual record in favor of appellant. As this court has held in *Caston v. Sears, Roebuck & Co.*, 556 F. 2d 1305, 1309 (5th Cir. 1977), "District Courts should be sensitive to the problems faced by *pro se* litigants and innovative in their responses to them."

By ignoring the evidence submitted by appellant, and resolving the ambiguity of proof as to appellee's pattern of conduct under similar situations in favor of appellee, when it had the persuasion burden as to developing a legitimate, non-discriminatory explanation for its conduct (See

McDonnell Douglas Corp. v. Green, 411 U. S. 792, 802-803), the courts below erred as a matter of law and of act and should be reversed.

REASONS FOR GRANTING THE WRIT

This Court should recognize the flagrant discrimination and injustices that were done against the appellant, a Black, and the number of Blacks (Skycaps) that this flagrant discrimination and injustice is still being done by appellee, that being the curbside checking of baggage.

This Court should also take in consideration why the class action and the motion to compel discovery was denied by the late U. S. District Judge John H. Wood, Jr., in Case SA-71-CA-192 which was tendered as evidence in defendant's proposed pre-trial order in Case SA-76-CA-112.

CONCLUSION

For the aforesaid reason, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

LEONARD A. HILL

4410-A McCombs East
San Antonio, Texas 78220

Pro Se

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNIT A

NO. 79-4085

Summary Calendar

LEONARD A. HILL,

Plaintiff-Appellant,

vs.

AMERICAN AIRLINES, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas

(OCTOBER 27, 1980)

Before AINSWORTH, GARZA and SAM D. JOHNSON, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

---

1 See *N. L. R. B. v. Amalgamated Clothing Workers of America*, 1970, 430 F. 2d 966.

APPENDIX B

February 24, 1970

H. Ferbrache - SAT

Dear Harry:

I have reviewed the letter that Mr. Hill submitted as a grievance. It is readily apparent that Mr. Hill fancies himself as a "Sea Lawyer". We are in no way obligated to supply Mr. Hill with written statements nor copies of Company policies. I would suggest that you answer Mr. Hill in a general fashion, keeping in mind that management through years of experience gains character impressions of employees' work performance over a period of time without being able to pinpoint specific incidents which contribute to the evaluation. It is thus often the case that in giving an employee an unsatisfactory review for performance over a period of time isolated incidents contribute to the impression when viewed by themselves might seem trivial.

We cannot expect Mr. Hill to be aware of this, nor are we really concerned with whether he is knowledgeable as to what goes into making an evaluation. Clearly, Mr. Hill has not demonstrated to your satisfaction that he is more than a low average employee. If he continues to fail to accept corrective criticism in the spirit which it is offered, we will have more serious problems with him further down the line. I would suggest that you keep a very careful check on his work performance and whenever possible enlist the assistance of other supervisors in this. If possible keep a record of some of Mr. Hill's more glaring deficiencies in the event that it becomes eventually necessary to terminate the individual.

/s/ Barney O. Spurlock, Jr.

eb

APPENDIX C

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
Office of the Clerk

March 14, 1980

Mr. Kevin S. Wiley
MATHEWS, NOWLIN, ET AL.
1500 Alamo National Bldg.
San Antonio, TX 78205

NO. 79-4085—LEONARD A. HILL v.
AMERICAN AIRLINES, INC.
(DIST. CT. NO. SA-76-CA-112)

Dear Mr. Wiley:

Your unopposed motion to reinstate the referenced appeal has been granted by the Clerk.

By copy of this letter to the Clerk of the District Court, we are requesting that the record on appeal, which was returned on February 29, 1980, be forwarded to this office as soon as possible.

Your brief will be due for filing within 40 days from the date of this letter, or by no later than April 23, 1980.

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

BY /s/ Brenda Hauck
Deputy Clerk

/bh

cc: Mr. Leonard A. Hill
Mr. Ralph E. Hartman
Mr. Charles W. Vagner, Clerk

APPENDIX D

McDonald & McDonald, Suite 203, Groves Prof. Bldg. Houston, Texas 77004

Luis M. Segura, Inc., 712 San Antonio Savings Bldg., San Antonio, Texas 78205

Aplleberry, Deyeso & Hasse, Inc., 901 N. E. Loop 410, San Antonio, Texas 78209

Clemens, Weiss, Spencer & Welmaker, 1805 National Bank of Commerce Bldg., San Antonio, Texas 78205

George Ashen, 1226 Bannock Street, Denver, Colorado 80204

Williams & McKnight, Suite 702, 201 N. St. Mary's St., San Antonio, Texas 78205